IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1765 OF 2003

IN

SUMMARY SUIT NO. 5603 OF 1999

Mrs. Shobha V. Desai .. Plaintiff.

Vs

Ajit Maneklal Chokshi .. Respondents

Mr. Shailesh Thakker with B.S. Shetty

for plaintiff.

Mr. T.N. Tripathi for defendant.

..

CORAM : S.U.KAMDAR,

DATE : 1ST FEBRUARY, 2005.

P.C.

1. The present chamber summons has been taken out for the purpose of examining the judgment debtor under Order XXI, Rule 41 of the Code of Civil Procedure Code to point out the details particulars of the assets on affidavit. The judgment debtor has filed affidavit dated 7.9.2004 inter alia stating as under :-

> "I am not owing any assets which can be proceeded with in execution of the decree passed in the above suit. I am on mercy of my family and the relatives and they are looking after me and my treatment. I say that the said flat was sold in discharge of mortgage created in favour of the Bank. After disposing of the said flat no assets is left with me and as a matter of fact I have been rendered as a liability on my family and relatives. I have no resource and means to pay the decretal amount."

2. The learned counsel for the plaintiff has pointed out to me that the flat No.C/4 on 13th Floor of Matru Aashish Co-operative Housing Society 39, Napeansea Road, Mumbai has been disposed of by the judgment debtor admittedly for the consideration of a sum of Rs. 36 lacs. The purported decree passed in the original Application No. 271 of 2001 in favour of the Indian Overseas Bank for making payment of only Rs. 27,26,117/-. No account is given in respect of the balance amount. It is ex-facie clear that the judgment debtor is not permitting the execution of the decree as against him and not disclosing deliberately his assets so as to enable the plaintiff to execute the decree in

view of the statement that the judgment debtor has no assets against which the decree can be satisfied. The chamber summons is disposed of with the liberty to the plaintiff to take out appropriate chamber summons for the arrest of the judgment debtor in accordance with the provisions of the CPC.